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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL D. ZOECKLER

Appeal 2010-005635
Application 09/559,704
Technology Center 3700

Before: JENNIFER D. BAHR, LINDA E. HORNER, and
STEVEN D.A. MCCARTHY, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael D. Zoeckler (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-3, 5-7, 9-11, 13-15, 25-29, 31-33, and 77-81. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on May 10, 2012.

We REVERSE.

The Claimed Subject Matter

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of making a paperboard carton having a top wall, a bottom wall, and two side walls, the carton having selectively reinforced panels, said method comprising the steps of:

(a) advancing a web of noncorrugated paperboard along a path, the web of noncorrugated paperboard having a width and longitudinally extending panel portions that will each become a plurality of panels, the longitudinally extending panel portions being separated by longitudinal fold lines;

(b) progressively applying and adhering at least a first ribbon and a second ribbon of reinforcing material to the advancing web of noncorrugated paperboard, the first ribbon and the second ribbon having a width less than the width of the web of noncorrugated paperboard, the first ribbon being positioned to overlie and adhere to substantially all of, but not beyond, a first selected longitudinally extending panel portion of the web, and the second ribbon being positioned to overlie and adhere to substantially all of, but not beyond, a second selected longitudinally extending panel portion of the web, the first ribbon and the second ribbon not extending across the longitudinal fold lines;

(c) cutting the web of noncorrugated paperboard to form a carton blank having panels corresponding to the top wall, the bottom wall, and the two side walls of the carton; and

(d) forming the blank into the carton for receiving articles, the carton having an inside and an outside, the first ribbon and the second ribbon of reinforcing material reinforcing the carton and being positioned on the inside of the carton.

References

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Claff	US 2,008,608	Jul. 16, 1935
Meyers	US 4,177,715	Dec. 11, 1979
Decottignies	US 5,097,651	Mar. 24, 1992
McNown	US 5,447,270	Sep. 5, 1995
Walsh	US 5,746,871	May 5, 1998

*Rejections*¹

The Examiner rejected claims 1, 3, 5-7, 11, 13, 25, 29, 31-33, and 77 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Walsh.

The Examiner rejected claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Walsh in view of Decottignies.

The Examiner rejected claims 78-81 under 35 U.S.C. § 103(a) as unpatentable over Walsh in view of Meyers.

The Examiner rejected claims 1-3, 5-7, 11, 13-15, 25-29, 31-33, and 77 under 35 U.S.C. § 103(a) as unpatentable over McNown and Walsh.

The Examiner rejected claims 1-3, 5-7, 11, 13-15, 25-29, 31-33, and 77 under 35 U.S.C. § 103(a) as unpatentable over McNown and Claff.

¹ The Examiner did not repeat the rejection of claims 2, 14, 15, and 26-28 as unpatentable over Walsh and McNown in the Answer mailed January 28, 2010. Thus, we understand that the Examiner withdrew this rejection.

OPINION

Anticipation and Obviousness Based on Walsh

While the Examiner correctly notes that independent claims 1 and 25 do not require performing a folding process prior to adhering the ribbons to the web (Ans. 9-10), these claims do require a step of applying and adhering (claim 1) or laminating (claim 25) at least a first ribbon and a second ribbon of reinforcing material to an advancing web of noncorrugated paperboard having longitudinally extending panel portions being separated by longitudinal fold lines. The Examiner has not pointed to any disclosure in Walsh of panel portions separated by longitudinal fold lines in the web 2 of paperboard material to which the strips 6 are applied and adhered, and we do not find any such disclosure. Walsh's figure 2, which is a top plan view of the laminate with the strips 6 laminated to the web 2, does not depict any fold lines on or in the web 2. *Contra* Ans. 3 (alluding to fold lines 54 in fig. 2). Walsh discloses fold lines 54 formed in the rigid web material 2 of the carton blank 50, but is silent as to when such fold lines are formed. Col. 3, ll. 42-48 (describing modified cut lines 52 and fold lines 54), col. 3, l. 51 - col. 4, l. 1 (discussing formation of cut lines 52); figs. 5, 6.

Additionally, claims 1 and 25 require that the first ribbon be positioned to overlie and adhere to substantially all of, but not beyond, a first selected longitudinally extending panel portion of the web, and that the second ribbon be positioned to overlie and adhere to substantially all of, but not beyond, a second selected longitudinally extending panel portion of the web, with the first ribbon and the second ribbon not extending across the longitudinal fold lines. As acknowledged by the Examiner (Ans. 4), Walsh's disclosure "is not clear as to the exact positioning of the [strips 6] with respect to fold lines 54." *See also* App. Br. 8, 11-12 (discussing the

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second reason asserted as to why one of ordinary skill would conclude from Walsh's disclosure that the strips 6 extend across the longitudinal fold lines 54). We cannot find by a preponderance of the evidence that Walsh's strips 6 do not cross the longitudinal fold lines 54.

For the above reasons, the Examiner has not established a *prima facie* case that Walsh anticipates the subject matter of claims 1 and 25 and their dependent claims. We do not sustain the rejection of claims 1, 3, 5-7, 11, 13, 25, 29, 31-33, and 77 under 35 U.S.C. § 102(b) as anticipated by Walsh.

In rejecting claims 1, 3, 5-7, 11, 13, 25, 29, 31-33, and 77, in the alternative, under 35 U.S.C. § 103(a) as unpatentable over Walsh, the Examiner does not articulate any reason why it might have been obvious to modify the method of Walsh to apply and adhere, or laminate, the strips 6 to an advancing web having longitudinally extending panel portions being separated by longitudinal fold lines, as called for in claims 1 and 25.

Moreover, the Examiner's articulated reason for modifying Walsh so that the strips do not extend beyond the longitudinal fold lines, namely, "in order to reinforce the top and bottom panels without interfering with the folding procedure in constructing the completed carton" (Ans. 4) lacks rational underpinning, for the reasons cited by Appellant on page 14 of the Appeal Brief. Specifically, as pointed out by Appellant, Walsh does not disclose reinforcement as a function of the strips 6. Further, Walsh describes the ribbons 6 as made "of a relatively flexible material, such as kraft paper." Col. 2, ll. 55-56. Such a description would not appear to suggest that the material of strips 6 would interfere with the folding procedure. Moreover, as evidenced by Claff, it was known in the art to apply adhesive tape, "known to the trade as 'Kraft tape,'" to a web across

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fold lines prior to creasing the web, cutting it to form blanks, and folding the carton blank into a carton. Claff, p. 1, col. 2, l. 23 - p. 2, col. 1, l. 8.

Accordingly, for both of these reasons, we also do not sustain the rejection of claims 1, 3, 5-7, 11, 13, 25, 29, 31-33, and 77 under 35 U.S.C. § 103(a) as unpatentable over Walsh.

Obviousness Based on Walsh in view of Decottignies and Walsh in view of Meyers

The Examiner's rejections of claims 9 and 10 as unpatentable over Walsh and Decottignies and of claims 78-81 as unpatentable over Walsh and Meyers suffer from the same deficiencies as the rejections based on Walsh alone. Thus, for the same reasons, we do not sustain these rejections.

Obviousness Based on McNow and Walsh

We agree with Appellant that McNow does not disclose an embodiment in which a first ribbon (lamination) is positioned to overlie and adhere to substantially all of, but not beyond, a first selected longitudinally extending panel portion of the web, and a second ribbon (lamination) is positioned to overlie and adhere to substantially all of, but not beyond, a second selected longitudinally extending panel portion of the web, with the first ribbon and the second ribbon not extending across the longitudinal fold lines, as called for in claims 1 and 25. *See Reply Br. 12-14.* McNow also does not disclose a method of making the container blank comprising the step of applying and adhering, or laminating, the strips 6 to an advancing web having longitudinally extending panel portions being separated by longitudinal fold lines, as called for in claims 1 and 25. Thus, McNow does not make up for the deficiencies of Walsh discussed above.

We do not sustain the rejection of rejected claims 1-3, 5-7, 11, 13-15, 25-29, 31-33, and 77 as unpatentable over McNow and Walsh.

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Obviousness Based on McNown and Claff

This rejection fares no better than the rejections discussed above. Claff, as noted above, describes applying the lamination (adhesive tape 2) across the fold lines (p. 1, col. 2, ll. 29-43), and further, describes forming the fold lines after the tape has been applied (p. 1, col. 2, ll. 44-48). Thus, the combination of the teachings of Claff with those of McNown does not make up for the deficiencies of Walsh and the combination of McNown and Walsh discussed above.

We do not sustain the rejection of claims 1-3, 5-7, 11, 13-15, 25-29, 31-33, and 77 as unpatentable over McNown and Claff.

DECISION

The Examiner's decision rejecting claims 1-3, 5-7, 9-11, 13-15, 25-29, 31-33, and 77-81 is reversed.

REVERSED

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